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December 12, 2006

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

REDACTED -- FOR PUBLIC INSPECTION

Re: *Ex Parte Notice*
Applications for the Assignment of License from Denali PCS, L.L.C. to
Alaska DigiTel, L.L.C. and for Transfer of Control of Alaska DigiTel, L.L.C.
WT Docket No. 06-114

Dear Ms. Dortch:

On December 11, 2006, the undersigned met with Barry Ohlson, Senior Legal Advisor to Commissioner Jonathan S. Adelstein. The subject of this meeting was consistent with previous filings made by MTA Wireless in the referenced docket, including the *ex parte* letter comments filed on December 4, 2006.

In addition, Mr. Ohlson requested that the undersigned counsel submit copies of filings in this docket made by MTA Communications, Inc. d/b/a MTA Wireless which analyze the contractual relationship between GCI Communications, Inc. and Dobson Cellular Systems, Inc. A copy of the transmittal to Mr. Ohlson and the relevant excerpts of those filings is attached herewith.

This letter is being filed pursuant to Section 1.1206 of the Commission's rules. 47 C.F.R. § 1.1206. Because these excerpts include discussions of confidential information subject to the Commission's Protective Order in this proceeding, the undersigned will shortly file a redacted version of this *ex parte* notice. Please direct any questions regarding this notification to the undersigned.

Sincerely yours,

/s/ Stefan M. Lopatkiewicz

Stefan M. Lopatkiewicz
Counsel to MTA Communications, Inc.
d/b/a MTA Wireless

cc: Attached Service List

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Fred Campbell, Office of Chairman Martin
John Branscome, Office of Commissioner Copps
Barry Ohlson, Office of Commissioner Adelstein
Aaron Goldberger, Office of Commissioner Tate
Angela Giancarlo, Office of Commissioner McDowell
Erin McGrath, WTB
Susan Singer, WTB
Paul Murray, WTB
Blaise Scinto, WTB
Neil Dellar, OGC
Ann Bushmiller, OGC
Carl W. Northrop, Esq.
Michael Lazarus, Esq.
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Alaska DigiTel, L.L.C. and for Transfer of Control of Alaska DigiTel, L.L.C.
WT Docket No. 06-114

Dear Barry:

Thank you for meeting with me today to discuss the above-referenced proceeding. Pursuant to your request, I have attached the analyses made on behalf of MTA Communications, Inc. d/b/a MTA Wireless on the joint venture relationship between GCI Communications, Inc. and Dobson Cellular Systems, Inc. These excerpted analyses include pages 9 to 18 of the Supplemental Comments of MTA Wireless in Support of Petition to Deny Applications filed on July 24, 2006, pages 21 to 25 of MTA Wireless' Reply to Applicants' Filings filed on September 6, 2006, and my letter to the Commission dated September 25, 2006 commenting on the GCI-Dobson Letter of Intent dated July 26, 2006.

Because these materials include analysis of certain proprietary information that is subject to the Commission's protective order in this docket, the *ex parte* disclosure of this communication will be filed with the Commission both under confidentiality and in redacted form.

Sincerely yours,

/s/ Stefan M. Lopatkiewicz

Stefan M. Lopatkiewicz
Counsel to MTA Communications, Inc.
d/b/a MTA Wireless

Enclosures

cc: Attached Service List

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**B. GCI's Agreements with Dobson Reveal an Extraordinarily
Close Cooperative Relationship Between Competitors**

1. *Significant Contract Terms*

In response to the Commission's directive to produce into the record "any resale/wholesale and spectrum leasing agreement(s) between GCI and Dobson," the applicants filed copies of an Agreement between GCI and Dobson effective as of July 26, 2004, which

, as well as a Long-Term *De Facto* Transfer Spectrum Lease

¹⁸ Amended Operating Agreement, sections 10.3-10.5.

¹⁹ *Id.*, section 16.1.

Agreement dated April 15, 2005 between the same parties ("Spectrum Transfer Lease"). In response to request by counsel for MTA Wireless, the applicants subsequently also produced a copy of a Short-Term Spectrum Manager Lease Agreement between GCI and Dobson ("Spectrum Manager Lease") which was executed by the parties simultaneously with the

Agreement and was superseded by the Spectrum Transfer Lease. Considered as a whole, the three agreements reflect an extraordinarily profound level of cooperation between GCI and the largest wireless provider in the Alaska market.

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Further evidence of this GCI

business plan is found in GCI's response to Commission questions 9(a) and (b) in its request for

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data production, where GCI confirmed that it secures all of its phone numbers used for its wireless customers from Dobson.³²

³² Letter from Carl Northrop, counsel to GCI, to Marlene Dortch, dated June 16, 2006, page 2.

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Since the Spectrum Transfer Lease was entered into to replace the Spectrum Manager Lease

The peculiar nature of this arrangement makes more sense when viewed as a means of

What is of significance to the instant proceeding, however,

This understanding differs from the representation made by the applicants to the Commission in their Joint Opposition that

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2. *Analysis*

Analysis of the terms of the Agreement and Spectrum Leases between GCI and Dobson reveal that the two parties are not acting as competitors in the Alaska CMRS market, but more as partners. At a minimum, these agreements demonstrate a coordinated course of conduct between two of the largest telecommunications providers in the state connoting significant competitive ramifications.

The record now contains clear evidence that

The public disclosure of this relationship

vindicates the analysis advanced in MTA Wireless' Petition to Deny that, in the key Anchorage market, this equates to an aggregation of control over 115 MHz of cellular and PCS spectrum. Nor is there any legitimate reason to "credit" GCI, when calculating the concentration of spectrum which the transaction will make possible,

The contractual undertakings of GCI and Dobson to one another also confirm MTA Wireless' analysis that GCI has effectively warehoused its state-wide PCS spectrum over most of the life of its license since 1995, and

CONCLUSIONS

B. GCI's Relationship with Dobson Indicates Horizontal Coordination
Between Surviving Major Competitors in the Relevant Market

The Applicants' Supplemental Opposition adds little of substance to the debate regarding the role of GCI's relationship with Dobson in the Commission's consideration of the anti-competitive impact of the Transaction. In its Supplementary Comments,⁵³ MTA Wireless provided an extended review and analysis of why the working agreement between GCI and Dobson reflects an extraordinarily broad range of cooperative activities between major competitors in the Alaska wireless market, . Yet, the

⁵² Supplemental Opposition, at 12-13.

⁵³ Supplementary Comments, at 9-18. MTA Wireless incorporates and reaffirms the analysis from its Supplementary Comments in its entirety in the discussion which follows.

Applicants continue to characterize this agreement as nothing more than a “normal resale arrangement.”⁵⁴ Notwithstanding the Applicant’s protestations to the contrary, the Commission’s own review of this key document will vindicate MTA Wireless’ characterization.⁵⁵

Rather than attempt to rebut MTA Wireless’ analysis on its specific points, the Applicants point out the various ways in which the agreement prevents GCI from acting as an aggressive competitor in the market

⁵⁶ If these characterizations are correct, one is left with the obvious question of why would GCI have gone to the effort of engaging in such a relationship?

Most importantly, however, GCI misstates MTA Wireless’ position by attempting to demonstrate that specific terms of the Dobson agreement do not reflect that Dobson is being “controlled” by GCI.⁵⁷ MTA Wireless has not attempted to claim that GCI is in a position to “control” the largest wireless carrier in the Alaska market. Instead, MTA Wireless has argued, and continues to argue, that the broad relationship between Dobson and GCI is evidence of coordinated activities between these competitors which justifies the Commission, when making its public interest analysis of the Transaction, to aggregate all wireless spectrum licensed to Dobson, and otherwise under its control, with that which will be subject to GCI’s control post-Transaction. Similarly, MTA Wireless’ argument that Dobson’s spectrum is relevant to the

⁵⁴ Supplemental Opposition, at 4.

⁵⁵ Significantly, the major contractual relationship between Dobson and GCI is entitled simply “Agreement,”

⁵⁶ Supplemental Opposition, at 17-18.

⁵⁷ Supplemental Opposition, at 18-19.

Commission's analysis rests not on GCI's role as a "reseller," but on the fact the parties' Agreement goes materially beyond that of a normal resale arrangement.

In its analysis of the competitive affects of wireless mergers, the Commission has applied the Department of Justice/FTC Merger Guidelines,⁵⁸ which instruct that horizontal contraction of the competitors in a market (which will clearly result from GCI's acquisition of DigiTel) can result in two forms of anticompetitive harm: first, through the unilateral actions of the merged entity, and second through "coordinated interaction among the remaining firms competing in the market."⁵⁹ As the guidelines indicate and this Commission has recognized, coordinated efforts occur when the remaining firms in the market, recognizing their interdependence, take actions that are profitable for each of them (and harmful for consumers) only as a result of accommodating the reactions of one another. Examples of such coordinated effects can include explicit collusion, tacit collusion and price leadership. The fewer the remaining firms in the market, the more likely it is that coordinated efforts will result.

In the Anchorage (and Alaska state-wide) market, the elimination of DigiTel through its acquisition by GCI will leave three major competitors, thereby creating conditions conducive to the form of coordinated activity that the Commission seeks to identify and eliminate. Given the specialized nature of the Alaska market, geographically isolated from the "Lower 48" states, MTA Wireless submits that the prospect for coordinated activity among the three leading state-wide CMRS licensees should be accorded particularly careful scrutiny.

⁵⁸ Horizontal Merger Guidelines, U.S. Department of Justice and the Federal Trade Commission, issued April 2, 1992; revised April 8, 1997 (hereinafter, "*DOJ/FTC Guidelines*"). See *Applications of Western Wireless Corporation and ALLTEL Corporation for Consent to Transfer Control of Licenses and Authorizations*, Memorandum Opinion & Order, 20 FCC Rcd 13053 (2005) ("*Western Wireless-ALLTEL Order*"), at 13075; *AT&T Wireless-Cingular Order*, at 21580.

⁵⁹ *Id.*, section 2.1.

When greater transparency exists for competitors to know and track one another's prices and other terms of competition, the likelihood for coordinated activity increases.⁶⁰ Here, MTA Wireless submits that the GCI-Dobson agreement will

Moreover, the *DOJ/FTC Guidelines* recognize that, when competitors are used to cooperating with one another, the increased likelihood of coordinated anticompetitive activity cannot be overlooked.⁶¹ Accordingly, the existence of the GCI-Dobson agreement is significant to the Commission's consideration of the public interest not only because it might reflect on GCI's ability to take unilateral anticompetitive action following the acquisition, but on the ability of GCI and Dobson to engage in coordinated activity, tacit or otherwise. As the only other major competitor in the market, ACS Wireless could, under these circumstances, feel the competitive pressure to acquiesce in at least tacit coordinated activity.

It is for these reasons that the existence and specific terms of the contractual relationship between GCI and Dobson is relevant to the Commission's public interest evaluation, and why such terms warrant close scrutiny and understanding. Moreover, it is for these reasons that the spectrum controlled by Dobson

must all validly be aggregated by the Commission with the spectrum that GCI will otherwise control for purposes of considering the possible anticompetitive effects of the transaction.

In summary, GCI's relationship with Dobson is far from "nothing out of the ordinary," as the Applicants dismissively allege.⁶² GCI has held a state-wide PCS license for over a decade,

⁶⁰ *Western Wireless-ALLTEL Order*, at 13087.

⁶¹ *DOJ/FTC Guidelines*, section 2.1.

⁶² Supplemental Opposition, at 22.

yet has not deployed its own system. It now has entered into a broad cooperative arrangement with its major wireless competitor, Dobson,

. At the same time, it seeks to consummate a separate agreement to acquire control of another wireless competitor with a system deployed throughout much of the state. This is anything but “ordinary” competitive behavior. MTA Wireless submits that this series of relationships in which GCI is engaged involving both DigiTel/Denali and Dobson must be considered as part of the “totality of circumstances” that the Commission will weigh in evaluating whether consummation of the Transaction will be in the public interest.

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Re: *WT Docket No. 06-114*
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Alaska DigiTel, L.L.C. and the Transfer of Control of Interests in Alaska
DigiTel, L.L.C. to General Communication, Inc.

On September 15, 2006, applicant General Communications, Inc. ("GCI") filed with the Commission under request for confidential treatment a letter of intent ("LOI") that GCI had entered into with Dobson on July 26, 2004. GCI reported to the Commission that the LOI was "just discovered" on September 13, the day it filed, with co-applicants Alaska DigiTel, LLC ("DigiTel") and Denali PCS, LLC ("Denali"), a *Joint Response to September 6, 2006 Submissions of MTA Wireless and ACS Wireless ("Joint Response")* in this proceeding, in which it continued to insist that its "reseller agreement with Dobson is not unlike other such agreements in the wireless marketplace." MTA Communications, Inc., d/b/a MTA Wireless ("MTA Wireless") hereby comments on this new submission into the docket and on GCI's accompanying argument.

The LOI by all measures confirms MTA Wireless' argument throughout this proceeding that GCI and Dobson are participants in a far-ranging strategic relationship warranting close examination by the Commission as part of its public interest evaluation of GCI's proposed acquisition of DigiTel and Denali. GCI insults the intelligence of the Commission by continuing to attempt to characterize that relationship as a "standard reseller agreement." See Applicant's *Joint Opposition to MTA Wireless' Supplemental Comments*, filed August 8, 2006, at 16-21.

Notably, the LOI was executed by GCI and Dobson concurrently with their Agreement of July 26, 2004, which, as has been extensively reviewed by the parties, is comprised of (hereinafter, collectively, "Strategic Agreement"). It is clear that the LOI was intended by the parties as a framework to help develop their multi-faceted relationship during the term of the Strategic Agreement. The document addresses on which the parties will cooperate, as well as measures to

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. If GCI believes that this set of

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undertakings, when considered together with the Strategic Agreement and with GCI's Long Term *De Facto* Spectrum Transfer Lease Agreement with Dobson, somehow qualifies as nothing more than a "standard reseller agreement," then MTA Wireless submits that GCI should demonstrate other examples of such "standard" relationships between direct competitors in the wireless market.

Yet, GCI, while producing the document into the record, immediately seeks to discount its importance by asserting that it has failed to reach agreement with Dobson to implement any of the salient terms of the LOI since its signing, thereby demonstrating that the parties are, in fact, acting "independently and on an arms length basis" from one another. While it is understandable why GCI is anxious to deflect the Commission's attention from the significance of the LOI, the reported lack of progress by the parties' in implementing the terms of the document by GCI's counsel cannot be accorded any weight, and in any case is not credible.

In offering a series of status reports on the implementation of the LOI's terms, GCI's counsel has failed to offer a scintilla of substantiation by either its client, or by Dobson, of the weighty assertions made. This is simply not an acceptable way under the Commission's rules for Applicants to attempt to conduct a critical fact-finding process. Moreover, counsel's allegation that the failure of the parties to make more expeditious progress toward their several strategic cooperative goals can by no means evidence that the LOI is a dead letter. As has been established, the Strategic Agreement has been entered into for an "initial term" of _____, and the LOI is, by all implications, intended to be coterminous with it.

GCI is not suggesting that it has been renounced. It clearly remains one of the executory elements of the GCI-Dobson strategic relationship.

GCI and Dobson, therefore, have had little more than two years in which to begin implementation of the several undertakings outlined in the LOI which, it bears remembering, are in addition to the numerous agreements set forth in the Strategic Agreement, on which the parties have presumably had to concentrate so far. This means that GCI and Dobson still have a minimum of _____ years remaining, _____, within which to address the joint projects outlined in the LOI.

Thus, even if the bald assertions of GCI's counsel in its September 15 letter were to be given credence, the fact that

_____ could hardly be accepted as proof that these objectives might not be achieved in the years to come. Indeed, relationships brought to light in this proceeding, as well as developments in the Alaska telecommunications market since the signing of the LOI, help explain the importance of a number of the cooperative undertakings that GCI and Dobson have outlined for themselves, and suggest that the likelihood of their future, if not present, implementation warrants continued scrutiny.

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(a) . First, there is GCI's declaration . . . " GCI's significant agreement with Sprint Nextel to terminate northbound MTA traffic as well as to originate southbound calling card and toll-free 800 service from Alaska is a matter of public record. See GCI Form 10-K for fiscal year ending December 31, 2005, filed with the Securities and Exchange Commission, at 20. To help , GCI and Dobson have agreed to

Obviously, GCI's acquisition of DigiTel, which operates a CDMA network, would jumpstart such an effort. DigiTel also has its own established relationship with Sprint, preliminarily analyzed by MTA Wireless in its September 6, 2006 *Reply to Applicants' Filings* (at 26-27) on the basis of the limited information made available so far by Applicants.

As MTA Wireless identified in that filing,

. Predictably, the Applicants have sought in their *Joint Response*, at 30, to dispute any ongoing relevance of the DigiTel relationship with Sprint, for which GCI would assume responsibility should it take control of DigiTel. The LOI, however, sheds new light on GCI's interest in with the assistance of Dobson. As a result, the future role of the and how it will relate to GCI's own warrants examination in the context of this proceeding. This analysis will provide the Commission a more complete understanding of GCI's proposed acquisition of DigiTel in the context of the larger and more complex web of relationships that GCI is structuring with other participants in the Alaska wireless market. The LOI provides that, even

Evidence of GCI's desire to leverage its planned control of roaming facilities in Alaska for the benefit of transport customers like Sprint Nextel gives credence to ACS Wireless' request that the Commission revisit the regulatory status of GCI's fiber optic capacity between Alaska and the lower 48 states. It also confirms the importance of the Commission insisting that DigiTel's agreements with Sprint that have been produced to counsel for MTA Wireless and ACS Wireless be included by Applicants in the record in this docket. MTA Wireless further requests that the Commission order the Applicants to produce into the record copies of any other letters of intent, memoranda of understanding or agreements of any nature with Sprint Nextel or its affiliates affecting or relating to the provision of mobile telephony services.

(b) . GCI's counsel offers the unsubstantiated assertion that none of the of the LOI have been developed yet and, therefore, are not currently part of GCI's service offering under its resale arrangement with Dobson. Putting to one side the need for factual verification of this allegation, the fact of the matter is that GCI has secured its authority to compete in the local exchange market in Alaska only within the last year, and is only now starting to deploy its local exchange service offering in the service area of MTA Wireless' parent organization, Matanuska

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Telephone Association ("MTA"). See Regulatory Commission of Alaska Order No. U-05-4(1), released September 23, 2005. As a result, GCI's use of such [REDACTED] is now of ever increasing relevance to GCI's effort to secure for itself a competitive advantage in the local exchange market. There is, therefore, every reason to believe that GCI is motivated to pursue with Dobson the deployment of such service enhancements going forward.

(c) Paragraph 3 of the LOI discusses GCI's and Dobson's agreement to [REDACTED]

[REDACTED] specifically in the service area of MTA Wireless' parent organization, MTA, as well as other rural markets in Alaska. Since execution of the LOI and the Strategic Agreement, both Dobson and GCI have actively pursued designation of ETC status in Alaska to qualify for federal universal service support for their service offerings. Dobson applied for ETC designation in a number of Alaska markets in May 2005 and received designation in January of this year. See Regulatory Commission of Alaska Order No. U-05-41(1), released January 25, 2006.

In support of its new role as a competitive local exchange carrier, GCI has applied for ETC designation in MTA's service area. In defending its ability to provide service throughout the incumbent's study area as required by section 214(e)(1) of the Communications Act, GCI has represented to the Regulatory Commission of Alaska that it will use a combination of its own facilities and "resale of other carriers' services." See GCI's Responses to Order Requiring Filings, Docket U-06-41, filed June 9, 2006, at 5. Among the carriers that GCI has represented it exchanges local traffic with are both Dobson and DigiTel. Application of GCI Communications Corp. for Designation as an Eligible Telecommunications Carrier, Docket U-05-41, filed May 2, 2006, at 5. There can be no question, therefore, that [REDACTED]

[REDACTED] is very much an issue of current importance to both GCI and Dobson.

MTA Wireless further notes that the record in this proceeding evidences that GCI already is including DigiTel's subscribers in its own wireless subscriber count. See Comments/Ex Parte Filing and Petition to Intervene of ACS Wireless, Inc., filed July 21, 2006, at 8. Should GCI secure ETC designation, either as a local exchange carrier or a wireless competitor, it will be important that its subscribers and those of DigiTel be separately accounted for so that universal service support is not given to both carriers for the same customers.

Summary. The LOI is yet another piece of evidence of the strategic relationship in which GCI and Dobson are engaged reaching far beyond any form of "standard reseller agreement." In producing this document into the record, GCI argued that the LOI does not "in its own right constitute a 'resale/wholesale and spectrum leasing agreement(s)' between GCI and Dobson" of the nature the Commission formally requested on June 9 be submitted. This statement suggests that other agreements, letters of intent or memoranda of understanding or cooperation might exist between GCI and Dobson that have not yet been brought to light.

Given the fact that the strategic relationship between GCI and Dobson represents "coordinated interaction" of direct competitors of the nature that the Commission must consider

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in weighing the public interest impact of the Applicants' proposed transaction, MTA Wireless submits that it is critical that documentation of all such undertakings between GCI and Dobson be produced into the record, and requests that the Commission ask GCI to produce at this time all such further records. Moreover, since GCI and its co-Applicants feel so strongly that the relationship with Dobson is nothing more than a "standard reseller agreement," MTA Wireless calls on the Applicants to withdraw their request for confidential treatment of such documentation, and produce all such documents in unredacted form for public inspection.

Sincerely yours,

/s/ Stefan M. Lopatkiewicz

Stefan M. Lopatkiewicz
Counsel for MTA Wireless

cc: Erin McGrath, Wireless Telecommunications Bureau, FCC
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